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Attorneys for Plaintiff,

BEVERLY LUZ COLEMAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEVERLY LUZ COLEMAN, an
individual,

Plaintiff,

vs.

NISSAN NORTH AMERICA, INC.,
a Delaware Corporation, and DOES
1 through 10, inclusive,

Defendants.

Case No.:

COMPLAINT

- 1. VIOLATION OF SONG-
BEVERLY ACT - BREACH OF
EXPRESS WARRANTY**
- 2. VIOLATION OF SONG-
BEVERLY ACT - BREACH OF
IMPLIED WARRANTY**
- 3. VIOLATION OF THE SONG-
BEVERLY ACT SECTION
1793.2**
- 4. FRAUD – FRAUDULENT
INDUCEMENT –
CONCEALMENT**



1 Plaintiff, BEVERLY LUZ COLEMAN (“Plaintiff”), an individual, alleges as
2 follows against Defendant, NISSAN NORTH AMERICA, INC., a Delaware
3 Corporation (“NISSAN NORTH AMERICA, INC.”), and DOES 1 through 10
4 inclusive, on information and belief, formed after a reasonable inquiry under the
5 circumstances:

6 **INTRODUCTION**

7 1. These causes of action arise out of the warranty obligations of NISSAN
8 NORTH AMERICA, INC. in connection with a vehicle purchased by Plaintiff and
9 for which NISSAN NORTH AMERICA, INC. issued a written warranty.

10 2. On December 13, 2018, Plaintiff purchased a 2019 Nissan Sentra,
11 having VIN No.: 3N1AB7APXKY239117 (“the Subject Vehicle”). These causes of
12 action arise out of warranty and repair obligations of NISSAN NORTH AMERICA,
13 INC. in connection with a vehicle that Plaintiff purchased and for which NISSAN
14 NORTH AMERICA, INC. issued a written warranty. The warranty was not issued
15 by the selling dealership.

16 3. The Subject Vehicle was delivered to Plaintiff with serious defects and
17 nonconformities to warranty and developed other serious defects and
18 nonconformities to warranty such as , including, but not limited to: defects causing
19 the Subject Vehicle to stall when sitting a stop for less than a minute; defects causing
20 the Forward Emergency Braking (“FEB”) system to falsely engage or otherwise not
21 work as intended; defects causing the Subject Vehicle to detect non-existent
22 obstacles, thereby automatically triggering the brakes and causing an abrupt
23 slowdown or complete stop with no actual need to do so; defects causing the FEB
24 system to deactivate itself, thereby distracting the driver and rendering the FEB
25 system disabled and useless; defects causing the Subject Vehicle’s dashboard to
26 indicate that there is something in front of the vehicle; defects causing the Subject
27 Vehicle’s dashboard to indicate that there is an automatic braking error; defects
28 causing the Subject Vehicle to shake vigorously when approaching a stop; defects

1 causing the Subject Vehicle's forward collision light to appear on the dashboard
2 when nothing is in front of the vehicle; defects causing the Subject Vehicle to stop
3 without warning during normal and intended vehicle operation; defects causing the
4 Subject Vehicle significant, unexpected, phantom decelerations and stops due to the
5 false engagement of the FEB system, despite no objects—vehicles, pedestrians, or
6 otherwise—were nearby; defects causing the FEB system to frequently deactivate
7 itself; and/or any other defects described in the repair history for the Subject Vehicle
8 (collectively, "Defects"). Said defects substantially impair the use, value, or safety
9 of the Subject Vehicle.

10 4. Plaintiff hereby revokes acceptance of the sales contract.

11 5. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter "the
12 Act") Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a "consumer
13 good" used primarily for family or household purposes, and Plaintiff has used the
14 vehicle primarily for those purposes.

15 6. Plaintiff is a "buyer" of consumer goods under the Act.

16 7. Defendant NISSAN NORTH AMERICA, INC. is a "manufacturer"
17 and/or "distributor" under the Act.

18 8. Plaintiff hereby demands trial by jury in this action.

19 **Plaintiff's Repair History of the Subject Vehicle**

20 9. The following is a summary of some pertinent portions of the repair
21 visits for the Subject Vehicle.

22 10. On April 3, 2019, with approximately 5,614 miles on the odometer,
23 Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility,
24 Raceway Nissan, and reported that the Air Conditioning System was not operating
25 as intended when attempting to lower the temperature. Upon inspection, Defendant's
26 authorized technician discovered the air mix ratio to be inaccurate and isolated the
27 air mix actuator as faulty. Defendant's technician replaced the air mix door actuator
28 and presented to Plaintiff that the Air Conditioning System is now operating as

1 intended. The inspection and repair were performed under the warranty issued by
2 NISSAN OF NORTH AMERICA, INC. The Subject Vehicle was out of service for
3 approximately 1 day during this repair attempt.

4 11. On November 1, 2019, with approximately 19,268 miles on the
5 odometer, Plaintiff presented the Subject Vehicle to Defendant's authorized repair
6 facility, Raceway Nissan, once again and reported that the Subject Vehicle would
7 intermittently refuse to start. Plaintiff noted that the Subject Vehicle's power is
8 present, however the starter will refuse to crank. Plaintiff also noticed when the
9 Subject Vehicle is behaving in this manner, the brake lights do not properly
10 illuminate when engaging the brake pedal to start. The brake light switch is a simple
11 spring-loaded switch that activates the brake lights when engaging the brake pedal.
12 The brake light switch is held open by a tab on the brake pedal, keeping the brake
13 lights off. Defendant's authorized technician was able to duplicate Plaintiff's concern
14 and discovered the brake light switch to be intermittently fixed in place, keeping the
15 brake lights off. Furthermore, a short-circuiting Brake Light Switch can cause the
16 brake lamp or bulb to burn out sooner and drain the Nissan's battery, leaving you
17 with a non-starting vehicle¹. Defendant's authorized technician removed the
18 defective component and replaced the brake light switch to remedy Plaintiff's
19 concern. Plaintiff continued to state that the Subject Vehicle's Radio volume acts
20 erratic and fluctuates when adjusted. Defendant's technician performed a
21 reconfiguration on the infotainment system according to the campaign to address the
22 volume issue. Additionally, Plaintiff reported that the tire pressure monitoring system
23 ("TPMS") light was illuminated on the Subject Vehicle's dashboard. Defendant's
24 technician discovered the tire pressure sensor contained an internal failure of the

25
26 ¹ According to the official Nissan of North America, Inc. website, malfunctioning brake lights can
27 put the driver at potential risk of a car accident. When the brake lights become compromised or
28 disconnected, it may not illuminate when pressing down the pedal. NISSAN NORTH AMERICA,
INC., 2019 Nissan Sentra Brake Light Switch-25320-BR00A-Genuine Nissan Part, available at
[https://parts.nissanusa.com/p/Nissan_2019_Sentra/Brake-Light-Switch/89555970/25320-
BR00A.html](https://parts.nissanusa.com/p/Nissan_2019_Sentra/Brake-Light-Switch/89555970/25320-BR00A.html)

1 sensor and thus indicating an inaccurate reading. After Defendant's technician
2 removed the faulty component and replaced the front right tire pressure sensor, they
3 presented to Plaintiff that the issue had been resolved. Despite the alleged repairs,
4 Plaintiff's electrical concerns have persisted throughout their ownership. The
5 inspection and repairs were performed under the warranty issued by NISSAN OF
6 NORTH AMERICA, INC. The Subject Vehicle was out of service for approximately
7 1 day during this repair attempt.

8 12. On February 12, 2020, with approximately 26,439 miles on the
9 odometer, Plaintiff presented the Subject Vehicle to Defendant's authorized repair
10 facility, Raceway Nissan, and reported that the Air Conditioning system does not
11 operate as intended. Plaintiff further described that unless the temperature is
12 positioned at 60 degrees, the Air Conditioning system would not release cool air. Any
13 higher would cause the Air Conditioning system to emit warm/hot air. Upon
14 inspection, Defendant's authorized technician claimed that they were unable to
15 duplicate Plaintiff's concern and reported that the Air Conditioning system to be
16 operating as intended. Although the Defendant's technician presented to Plaintiff that
17 the Subject Vehicle did not possess any nonconformities, Plaintiff's concern has
18 persisted throughout their ownership of the Subject Vehicle. The inspection was
19 performed under the warranty issued by NISSAN OF NORTH AMERICA, INC. The
20 Subject Vehicle was out of service for approximately 1 day during this repair attempt.

21 13. On April 14, 2020, with approximately 29,336 miles on the odometer,
22 Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility,
23 Raceway Nissan, and reported that the Radio unit's volume is now inoperative.
24 Plaintiff noted that the Radio unit acts erratic, and the volume will occasionally
25 fluctuate. Defendant's authorized technician was able to duplicate the issue of the
26 Audio Unit's volume knobs being irresponsive when adjusting the volume either up
27 or down. Thus, Defendant's technician removed and replaced the defective Audio
28 Unit Assembly, performed an Audio Unit configuration, then presented to Plaintiff

1 that the issue had been resolved. Plaintiff also stated that the Driver's side Headlight
2 Bulb was inoperative. Upon inspection, Defendant's technician discovered the
3 Headlight Bulb to possess an internal open circuit, causing the malfunction.
4 Defendant's technician accordingly removed and replaced the defective Front
5 Headlight bulb, and then presented to Plaintiff that the concern had been resolved.
6 Furthermore, Plaintiff also complained of the Front Pre-Collision Warning system
7 falsely activating although there being no other obstructions in the Subject Vehicle's
8 vicinity. Plaintiff further notes that the Pre-Collision Warning system falsely
9 activating, creates an untrustworthy and dangerous driving experience. Upon
10 inspection, Defendant's technician discovered the date of the distance sensor to read
11 August 8, 2018. As per the bulletin, the Defendant's technician replaced the defective
12 sensor and performed a distance sensor alignment to compensate for any
13 malfunctions. After the repairs, Defendant's technician reported the Subject Vehicle
14 to be operating as intended. Although the Defendant's technician presented to
15 Plaintiff that the Subject Vehicle did not possess any nonconformities, Plaintiff's
16 concern has persisted throughout their ownership of the Subject Vehicle. The
17 inspection was performed under the warranty issued by NISSAN OF NORTH
18 AMERICA, INC. The Subject Vehicle was out of service for approximately 1 day
19 during this repair attempt.

20 14. On April 19, 2022, with approximately 73,995 miles on the odometer,
21 Plaintiff presented the Subject Vehicle to Defendant's authorized repair facility,
22 Raceway Nissan, and reported the Subject Vehicle not being able to start.
23 Defendant's authorized technician performed a battery test on the Subject Vehicle
24 and verified Plaintiff's issue. Upon further inspection, the battery failed the loading
25 test and Defendant's technician discovered a broken positive terminal causing the
26 Subject Vehicle to not be able to start. To remedy Plaintiff's issue, Defendant's
27 technician proceeded to replace the defective battery and terminal. Although the
28 Defendant's technician presented to Plaintiff that the Subject Vehicle did not possess

1 any nonconformities, Plaintiff's concerns have persisted throughout their ownership
2 of the Subject Vehicle. The inspection was performed under the warranty issued by
3 NISSAN OF NORTH AMERICA, INC. The Subject Vehicle was out of service for
4 approximately 1 day during this repair attempt.

5 15. None of the aforementioned repair attempts successfully repaired the
6 Subject Vehicle, including its ongoing defects.

7 16. Thereafter, Plaintiff continued to experience symptoms of the various
8 defects despite Defendant's representation that the Subject Vehicle was repaired.

9 17. Defendant was under an affirmative duty under the Song-Beverly
10 Consumer Warranty Act to promptly offer to repurchase or replace the Subject
11 Vehicle as soon as it failed to conform the Subject Vehicle to the terms of the express
12 warranty after a reasonable number of repair attempts.

13 18. Despite having no obligation to do so, prior to filing this lawsuit,
14 Plaintiff contacted Defendant NISSAN OF NORTH AMERICA, INC. directly and
15 requested a repurchase of the Subject Vehicle due to the ongoing issues that
16 Defendant and its authorized repair facilities could not repair to conform the vehicle
17 to the terms of its written warranties within a reasonable number of repair
18 opportunities. Defendant denied Plaintiff's request.²

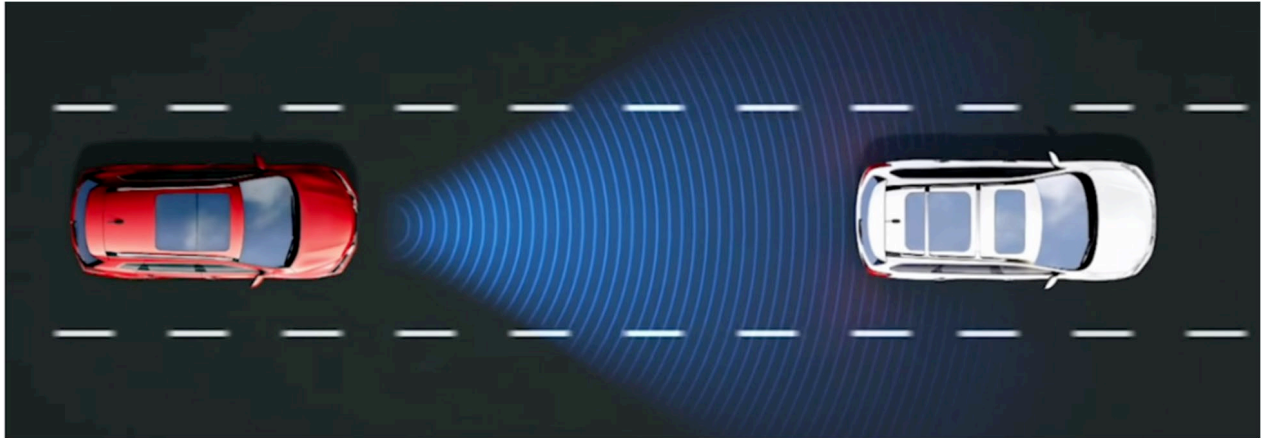
19 **Defendant's Knowledge of, and Failure to Disclose, the FEB Defect**

20 19. In 2017, NISSAN NORTH AMERICA, INC. began offering the feature
21 known as Forward Emergency Braking ("FEB") as an option on the various Nissan
22 models. For example, FEB was available as a part of the \$2,020 "SL Premium Package"
23 option on the 2017 Nissan Rogue SL.

24 20. As demonstrated below, the FEB system utilizes a radar and/or camera
25 system that measures the distance between the vehicle and its surrounding objects. If

26 ² "A manufacturer's duty to replace a vehicle does not depend on a consumer's request, but instead
27 arises as soon as the manufacturer fails to comply with the warranty within a reasonable time.
28 *Krotin v. Porsche Cars North America, Inc.*, 38 Cal.App.4th 294, 301-302 (1995). *Krotin* court
noted that "[a]n automobile manufacturer need not read minds to determine which vehicles are
defective; it need only read dealers' services records." *Id.* at 303.

1 the FEB system detects a rapid decrease in distance between the vehicle and an object
2 accompanied with no driver responsive inputs, the FEB system “provide[s] audible
3 and visual alerts and appl[ies] braking to help you avoid or mitigate a frontal collision
4 with a vehicle ahead.”



12 21. However, NISSAN NORTH AMERICA, INC. under-designed,
13 engineered, tested, and validated the FEB system. The FEB Defect, among other things,
14 causes: (1) the Subject Vehicle to detect non-existent obstacles, triggering a braking
15 response and causing the Subject Vehicle to abruptly decelerate or stop completely
16 despite no need for this action, and/or (2) the FEB system to deactivate itself, thereby
17 distracting the driver and rendering the FEB system unavailable and useless. The FEB
18 Defect presents a safety hazard that distracts Plaintiff and renders the Subject Vehicle
19 unreasonably dangerous to consumers as it severely impacts a driver's ability to control
20 the vehicle's speed as expected under normal driving conditions and maintain an
21 appropriate speed based on traffic flow, thereby increasing the risk of a rear-end
22 collision.

23 22. NISSAN NORTH AMERICA, INC. knew about the problem of false
24 activations in its FEB systems years before it put the first vehicle on the market.
25 NISSAN NORTH AMERICA, INC. became aware of the FEB Defect through
26 sources not available to Plaintiff, including, but not limited to: pre-production testing,
27 pre-production design failure mode and analysis data, production design failure mode
28 and analysis data, early consumer complaints made exclusively to NISSAN NORTH

1 AMERICA, INC.'s network of dealers and directly to NISSAN NORTH AMERICA,
2 INC., aggregate warranty data compiled from NISSAN NORTH AMERICA, INC.'s
3 network of dealers, testing conducted by NISSAN NORTH AMERICA, INC. in
4 response to consumer complaints, and repair order and parts data received by
5 NISSAN NORTH AMERICA, INC. from NISSAN NORTH AMERICA, INC.'s
6 network of dealers and suppliers, including Bosch and Continental.

7 23. In addition, NISSAN NORTH AMERICA, INC. and other members of
8 the automotive industry knew that as a new and not fully developed technology,
9 automatic braking systems like FEB were prone to false activations. NISSAN
10 NORTH AMERICA, INC. manufactured and sold the Subject Vehicle equipped with
11 this technology anyway.

12 24. As further evidence of NISSAN NORTH AMERICA, INC.'s pre-sale
13 knowledge, the owner's manuals for the earliest vehicles alluded to the risk of false
14 activations by stating "in some road or traffic conditions, the FEB system may
15 unexpectedly apply partial braking." This warning about the FEB system was buried
16 in small text in the middle of owner's manuals, which are several hundred pages long.
17 Notwithstanding the FEB system being touted as a safety feature, NISSAN NORTH
18 AMERICA, INC. never referenced or otherwise directed potential purchasers to this
19 hidden disclaimer. As such, Plaintiff would only see this disclosure, if at all, after
20 purchasing or leasing the vehicle, and if he happened to stumble upon it when reading
21 the owner's manual. Even then, however, the disclosure is too vague, cursory, and
22 non-specific to adequately warn anyone about the true scope and extent of the
23 dangers of the FEB Defect.

24 25. NISSAN NORTH AMERICA, INC. also began receiving an unusually
25 large number of complaints about false activations almost immediately after the
26 earliest vehicle entered the market. Nonetheless, NISSAN NORTH AMERICA, INC.
27 continued to sell the vehicle and continued to install the Continental ARS-410 radar
28 in newer model-year vehicles.

1 26. NISSAN NORTH AMERICA, INC. had, and continues to have, a duty
2 to fully disclose to Plaintiff the true nature of the FEB Defect, because, among other
3 reasons, the Defect poses an unreasonable safety hazard; because NISSAN NORTH
4 AMERICA, INC. had and has exclusive knowledge or access to material facts about
5 the vehicle's FEB systems that were not and are not known to, or reasonably
6 discoverable by Plaintiff; and because NISSAN NORTH AMERICA, INC. has
7 actively concealed the FEB Defect from Plaintiff at the time of purchase or repair
8 and thereafter.

9 27. Specifically, NISSAN NORTH AMERICA, INC.: (a) failed to disclose,
10 at the time of purchase or repair and thereafter, any and all known material defects
11 or material nonconformities of the Subject Vehicle, including the FEB Defect; (b)
12 failed to disclose, at the time of purchase or repair and thereafter, that the Subject
13 Vehicle and the FEB systems were not in good working order, were defective and
14 prone to failure, and were not fit for the intended purpose; and (c) failed to disclose
15 and/or actively concealed the fact that the Subject Vehicle and the FEB system was
16 defective, despite the fact that NISSAN NORTH AMERICA, INC. learned of the
17 FEB Defect before it placed the Subject Vehicle in the stream of commerce.

18 28. On June 8, 2018, NISSAN NORTH AMERICA, INC. released TSB
19 NTB18-041 concerning the "Unexpected Operation of AEB, FEB OR FCW
20 [Forward Collision Warning]" in 2018 Rogue, Rogue Hybrid, and Rogue Sport
21 vehicles. The TSB stated that "The following system(s) operate unexpectedly or the
22 customer reports unexpected operation: AEB (Automatic Emergency Braking); FEB
23 (Forward Emergency Braking); FCW (Forward Collision Warning). On July 19,
24 2018, Nissan released an amended TSB NTB18-041a, updated to include 2017-18
25 Rogue, Rogue Hybrid, and Rogue Sport vehicles. Neither of these TSBs prevented
26 false activations from occurring, and Nissan continued to receive complaints about
27 false activations after issuing these TSBs.

28 29. Since mid-2018, NISSAN NORTH AMERICA, INC. has issued

1 approximately 11 different TSBs, quality actions, or other service campaigns directed
2 at eliminating false activations in the Subject Vehicle. To this day, NISSAN NORTH
3 AMERICA, INC. still has not found a solution to false activations.

4 30. On January 25, 2019, NISSAN NORTH AMERICA, INC. released
5 NPSB18-443 AEB U – “Automatic Emergency Braking (AEB) Update Notification
6 Letter” – related to the 2017-2018 Nissan Rogue and Rogue Sport. In this bulletin,
7 NISSAN NORTH AMERICA, INC. stated “[i]n rare instances and unique roadway
8 environments such as certain types of railroad crossings and metal overpasses, the
9 AEB system in some vehicles may activate braking when not needed.” However, the
10 statement that false activations only occurred in “rare instances and unique roadway
11 environments” was false, and NISSAN NORTH AMERICA, INC. knew that the
12 statement was false. Drivers were experiencing false activations in ordinary and
13 common driving scenarios, like two-lane streets, highways, and parking garages.

14 31. As the Center for Auto Safety (“CAS”) explained on March 21, 2019,
15 this “‘Customer Service Initiative’ intended to ‘increase awareness of an available
16 update for the Automatic Emergency Braking (AEB) system.’ Presumably, this
17 update is the repair outlined in the July 2018 TSB. ... [However,] the summary
18 portion available suggests that Nissan's communication to Rogue owners does not
19 acknowledge the potential safety issue involved. The language treats the problem as
20 no more than a performance update, thus providing little incentive for consumers to
21 avail themselves of the repair opportunity until they experience the problem.”³

22 32. Federal law requires automakers like NISSAN NORTH AMERICA,
23 INC. to notify (and update) the National Highway Traffic Safety Administration of
24 potential defects. *See* TREAD Act, Pub. L. No. 106- 414, 114 Stat. 1800 (2000).
25 Accordingly, NISSAN NORTH AMERICA, INC. should (and does) monitor the

26 ³ The Center for Auto Safety, Petition for Defect Investigation (Mar. 21, 2019),
27 [https://www.autosafety.org/wp-content/uploads/2019/03/Center-for-Auto-Safety-Nissan-Rogue-](https://www.autosafety.org/wp-content/uploads/2019/03/Center-for-Auto-Safety-Nissan-Rogue-AEB-Defect-Petition-FINAL.pdf)
28 [AEB-Defect-Petition-FINAL.pdf](https://www.autosafety.org/wp-content/uploads/2019/03/Center-for-Auto-Safety-Nissan-Rogue-AEB-Defect-Petition-FINAL.pdf) (last visited May 7, 2020). On March 21, 2019, CAS submitted
a petition to NHTSA to “initiate a Defect Investigation into false activation of the emergency
braking system that is placing Rogue owners and other road users in danger.” *Id.*

1 NHTSA database to track reports of defective FEB systems. From this source,
2 NISSAN NORTH AMERICA, INC. knew that the Subject Vehicle was experiencing
3 unusually high levels of false engagements causing abrupt slowdowns, stops, or
4 deactivations.

5 33. As CAS explains, it “found 87 such complaints in NHTSA’s VOQ data
6 for the 2017-18 Rogue. All of these complaints indicate that the Rogue’s [FEB]
7 engaged when no obstruction was in the path of the vehicle. Many complaints
8 indicate that braking is abrupt or forceful, endangering both the Rogue occupants as
9 well as people in vehicles nearby, who are forced to avoid a collision with a suddenly
10 stopped vehicle.”⁴

11 34. Additionally, in early 2019, NISSAN NORTH AMERICA, INC. issued
12 a Notice of Defect for 91,000 affected Rogue vehicles from the 2017 and 2018 model
13 years “because their automatic emergency braking (AEB) system could
14 unintentionally engage.”⁵ Despite acknowledging this dangerous defect to Transport
15 Canada, NHTSA’s Canadian counterpart, NISSAN NORTH AMERICA, INC. has
16 made no such efforts to recall any of its AEB-equipped vehicles in the United States,
17 even though there are no differences between the Rogues that NISSAN NORTH
18 AMERICA, INC. sells to Canadian consumers and those it sells to American
19 consumers. Instead, it continued to equip Rogue and other Nissan-brand cars with
20 the ARS410 radar.

21 35. In addition, in 2020, NISSAN NORTH AMERICA, INC. issued a recall
22 for its X-Trail crossover SUV in Asia, which uses the same platform as the Nissan
23 Rogue in the United States and Canada. As reported by one news agency in Asia,
24 “[a]ccording to Nissan, these vehicles are fitted with a radar system made by
25 Continental. The affected radar model, ARS410 may activate especially when the
26

27 ⁴ *Id.*

28 ⁵ Nissan Canada recalls 90,000 Rogues over unintended braking, AUTOMOTIVE NEWS CANADA, April 12, 2019, available at <https://canada.autonews.com/automakers/nissan-canada-recalls-90000-rogues-over-unintended-braking>.

1 XTrailmaneuvers aroundbridges, parking garages, low-hanging traffic lights, and
2 even steep incline roads.” At that time, NISSAN NORTH AMERICA, INC.
3 suggested turning off the FEB system to avoid false activations until a software
4 update could be installed. However, to date, NISSAN NORTH AMERICA, INC. still
5 has not developed a software update that eliminates false activations.

6 36. The following example complaints filed by consumers with NHTSA
7 and posted on the Internet demonstrate that the FEB Defect is a widespread safety
8 hazard that continues to plague the Subject Vehicle. The complaints below are
9 examples only, and do not represent the universe of complaints that NISSAN
10 NORTH AMERICA, INC. has received. The number of complaints that NISSAN
11 NORTH AMERICA, INC. received was unusually high, which put NISSAN
12 NORTH AMERICA, INC. on further notice of the FEB Defect.

13 37. The following is an example of a Complaint regarding the FEB Defect:

14 **Dec 31, 2017 - Vacaville, CA - Forward Collision Avoidance**

15 THIS VEHICLE WAS PURCHASED NEW FROM THE
16 DEALERSHIP, NISSAN OF VACAVILLE, ON 9-16-2017. ON
17 10-26-2017 WHILE TRAVELING AT APPROXIMATELY 35
18 MPH THE VEHICLE'S FORWARD EMERGENCY BRAKING
19 SYSTEM (FEB) SUDDENLY AND UNEXPECTEDLY
20 ACTIVATED, BRING THE CAR TO A FULL AND COMPLETE
21 STOP IN THE MIDDLE OF THE ROAD. THE BRAKING
22 SYSTEM DISENGAGED WITHIN A FEW SECONDS AND I
23 WAS ABLE TO PULL TO THE SIDE OF THE ROAD. THERE
24 WERE NO ADVERSE CONDITIONS, OBSTRUCTIONS, OR
25 VEHICLES WITHIN A DANGEROUS DISTANCE TO HAVE
26 CAUSED THE ACTIVATION. THE DASHBOARD WARNING
27 LIGHTS DISPLAYED THE ALERT MESSAGE “WARNING”
28 “MALFUNCTION.” THE VEHICLE WAS SUBSEQUENTLY
TOWED TO AUTOCOM NISSAN OF CONCORD FOR
SERVICE AND DIAGNOSIS. I WAS TOLD CODES U1002,
C1B5D, AND C1A16-97 WERE STORED IN THE COMPUTER
SYSTEM. C1A16-97 RELATES TO AN OBSTRUCTION OR
BLOCKED RADAR SENSOR, BUT THAT ALL THE STORED
CODES WERE IN THE PAST. C1A16-97 WAS STORED AT
1983 MILES - I EXPERIENCED NO ACTIVATION OF THE

1 SYSTEM AT THAT TIME. ACCORDING TO THE
2 DEALERSHIP THERE WERE NO STORED CODES RELATED
3 TO TODAY'S INCIDENT. NISSAN TECH LINE MADE A
4 REMOTE DIAGNOSIS AND CONCLUDED A LOOSE
5 LICENSE PLATE FRAME LIKELY HAD CAUSED AND
6 OBSTRUCTION, ACTIVATING THE SYSTEM. THIS IS IN
7 CONFLICT WITH THE OWNERS MANUAL'S
8 EXPLANATION OF FEB SHUT DOWN IN THE EVENT OF AN
9 OBSTRUCTION. ON 12-19-2017 I RETURNED THE VEHICLE
10 TO THE DEALERSHIP WHERE I PURCHASED THE CAR.
11 AFTER FOUR DAYS OF DIAGNOSTIC AND ROAD TESTING
12 I WAS TOLD THAT, ACCORDING TO NISSAN TECH LINE,
13 SINCE THE DEALERSHIP WAS UNABLE TO DUPLICATE
14 THE MALFUNCTION DURING THE TEST DRIVE, THEN THE
15 CAR IS CONSIDERED OPERATIONAL AND SAFE AND
16 COULD BE RETURNED TO THE CUSTOMER. AND
17 ALTHOUGH FINDING MULTIPLE PAST CODES STORED
18 ECM-UL00L, ASB-UL002, BCM UL000-00, UL000-01, CLB40-
19 49, CLB30-49, UL000-00, ICC /ADAS-C1B53-04, CLB54-00,
20 UL000-01 ALL INDICATION MALFUNCTION. NONE OF
21 WHICH HAVE BEEN RESOLVED OR REPAIRED. ## VIN
22 PASSED ## NISSAN ROUGE S FWD 2017.5 ##

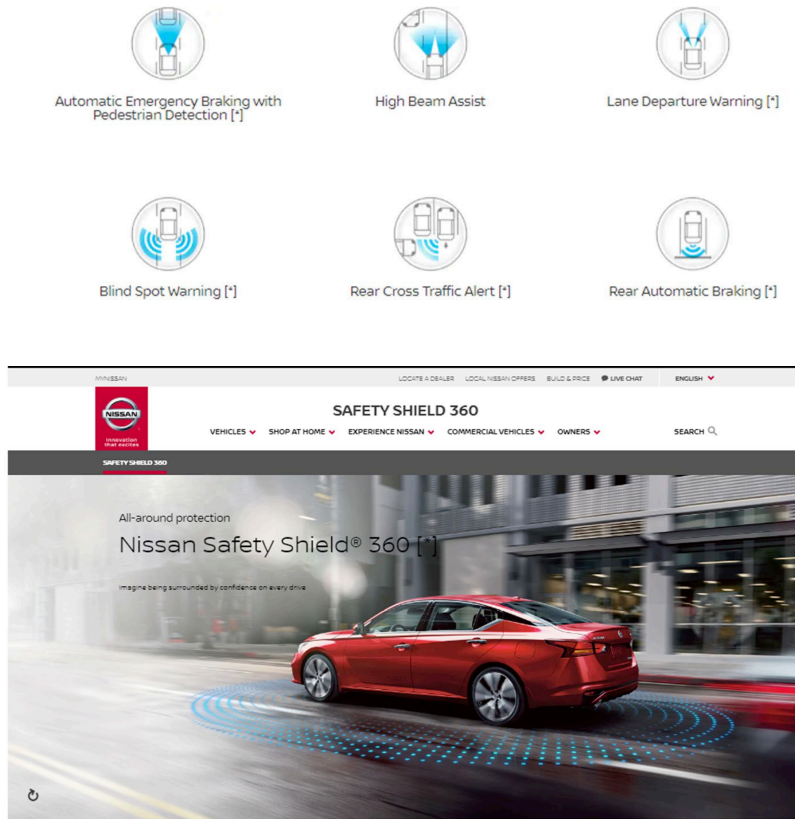
23 38. The above complaint represents only a sampling of otherwise
24 voluminous complaints regarding the FEB Defect that consumers have reported to
25 NISSAN NORTH AMERICA, INC. directly and through its dealers.

26 39. NISSAN NORTH AMERICA, INC. knew that the FEB Defect was
27 present in the Subject Vehicle equipped with the FEB system, as demonstrated above,
28 but it failed to remedy the defect. NISSAN NORTH AMERICA, INC.'s halfhearted
and unconscionable acts have deprived and continue to deprive Plaintiff of the benefit
of his bargain. Had Plaintiff known about the FEB Defect, he would not have
purchased the Subject Vehicle, or certainly would have paid less to do so.

40. NISSAN NORTH AMERICA, INC.'s overarching marketing message
for the Subject Vehicle, and specifically the FEB System, was and is that the FEB
System creates a safe and reliable vehicle. This marketing message is false and
misleading given the FEB Defect, which distracts consumers and can cause the

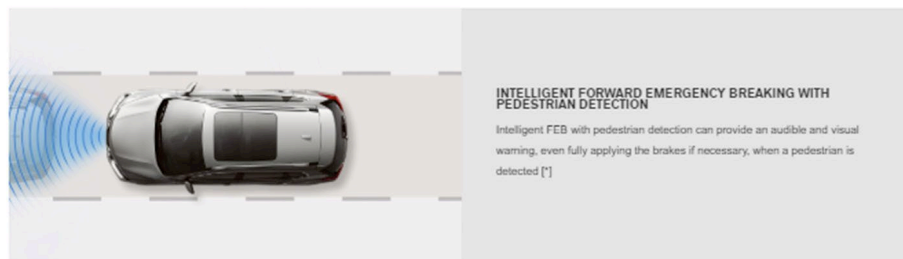
Subject Vehicle to suddenly and unexpectedly stop in the middle of the road.

41. For example, Nissan dedicates a page on its website for the Nissan Safety Shield 360, touting “[a]ll-around protection” and, specifically, the FEB System:” 3F⁶



INTELLIGENT INNOVATION THAT'S ON YOUR SIDE

Today's Nissan vehicles offer available technologies that help look out for you, and some of them CAN even take action and help you avoid trouble. The available Blind Spot Warning with available Blind Spot Intervention is just one feature in a comprehensive suite of Intelligent Safety Shield Technologies. [*]



⁶ <https://www.nissanusa.com/safety-shield.html> (last visited Jun 19, 2022)

Innovation
that excites

NISSAN SAFETY SHIELD CONCEPT



1. Monitor

Nissan is committed to its position as a leader in the world of automotive safety. This dedication to comprehensive safety goes into the engineering and design of every vehicle we make, and it drives the development of the Nissan Safety Shield technologies.

The Safety Shield Technologies Operate During Three Basic Phases:

These technologies monitor vehicle systems and the outside driving environment.

Vehicle Dynamic Control [*]

If VDC detects sudden over or under steer, it reduces engine power and/or applies brake pressure to individual wheels to help keep you on your steered path.

Traction Control System

TCS can sense drive-wheel spin and respond by reducing throttle or applying brake pressure to help maintain traction.

Anti-lock Braking System

In panic-braking situations the ABS rapidly pumps the brakes, helping prevent wheel lockup and helping you maintain steering control.

Electronic Brake Force Distribution

The EBD system sends extra force to the rear brakes when it senses additional weight in the back.



2. Respond

These technologies help you respond to potentially harmful situation.

Around View® Monitor [*]

This feature creates a bird's-eye view of your Nissan and displays it on the LCD monitor, so parking and backing-up are both safer and easier.

Tire Pressure Monitoring System [*]

Using an icon on your Nissan's dash, TPMS warns you when tires aren't properly inflated.

Lane Departure Warning [*]

If you unintentionally stray from your lane, this system lets you know with audio and visual alerts.

Blind Spot Warning [*]

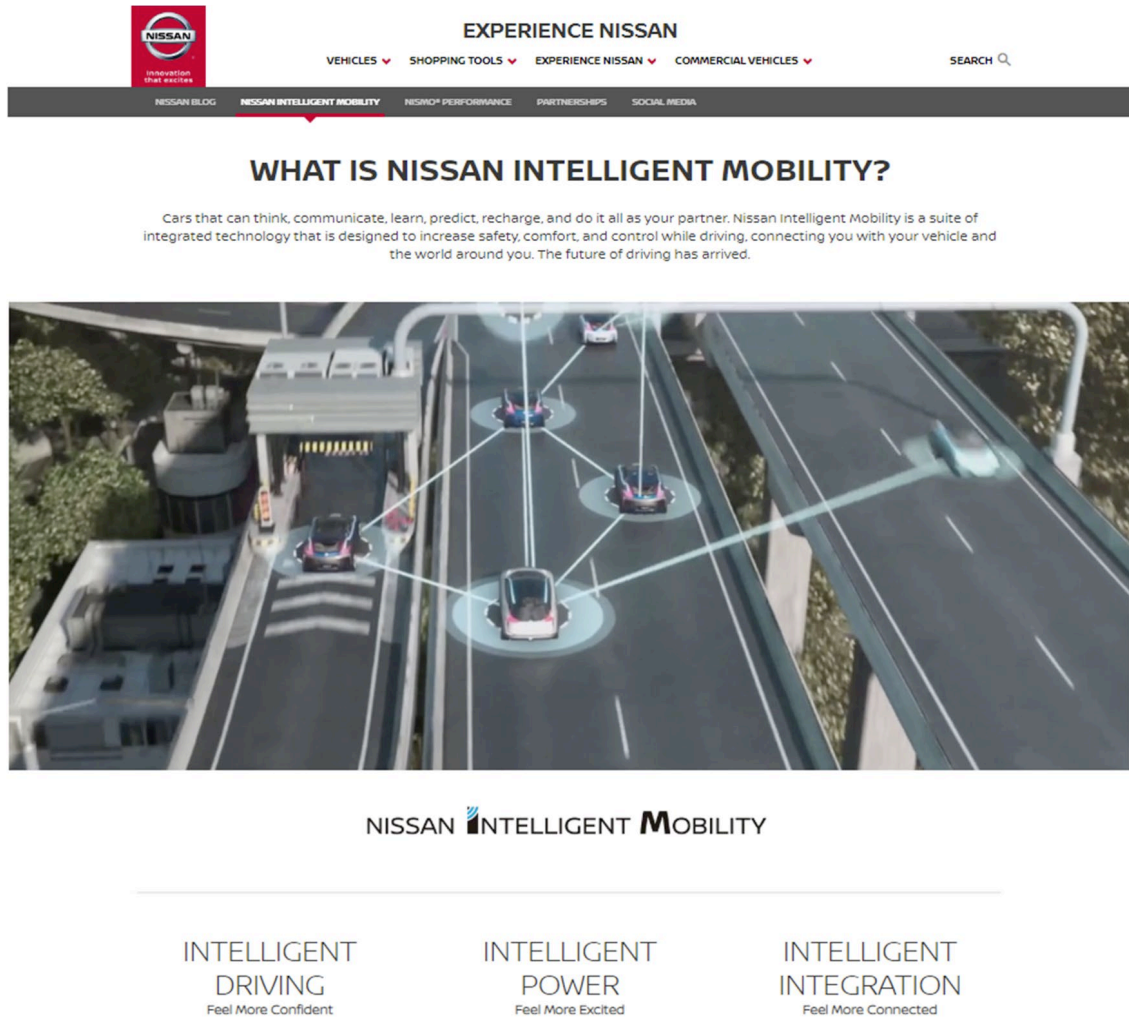
Indicators illuminate when the system detects a vehicle in your blind spot, and the system chimes a warning if the turn signal is activated.

RearView Monitor [*]

When backing-up, the RearView Monitor helps you see what's directly behind you.

Moving Object Detection [*]

Indicators illuminate when the system detects a vehicle in your blind spot, and the system chimes a warning if the turn signal is activated.



42. That NISSAN NORTH AMERICA, INC. touted the safety and reliability of the Subject Vehicle and the FEB system while knowing of the FEB Defect and its gross underperformance, is unfair and unconscionable.

43. Although NISSAN NORTH AMERICA, INC. was aware of the widespread nature of the FEB Defect in the Subject Vehicle, and that it posed grave safety risks, NISSAN NORTH AMERICA, INC. failed to take adequate steps to notify Plaintiff of the FEB Defect and provide relief.

44. NISSAN NORTH AMERICA, INC. has not recalled the Subject Vehicle to repair the FEB Defect and has downplayed the severity of the FEB Defect in service campaigns. It has not offered Plaintiff a suitable repair or replacement of

1 parts related to the FEB Defect free of charge, or offered to reimburse Plaintiff for
2 costs incurred for repairs related to the FEB Defect.

3 45. Plaintiff has not received the value for which he bargained when he
4 purchased the Subject Vehicle.

5 46. NISSAN NORTH AMERICA, INC. has deprived Plaintiff of the benefit
6 of his bargain, exposed him to a dangerous safety defect without any notice, and
7 failed to repair or otherwise remedy the FEB Defect contained in Subject Vehicle.
8 As a result of the FEB Defect, the Subject Vehicle's value has diminished, including
9 without limitation, the vehicle's resale value. Reasonable consumers, like Plaintiff,
10 expect and assume that a vehicle's FEB system and related components are not
11 defective, and will not malfunction while operating the vehicle as it is intended to be
12 operated, and thus did not receive the benefit of their bargain, i.e., the price premium
13 they paid attributable to the FEB system.

14 47. Plaintiff further expects and assumes that NISSAN NORTH
15 AMERICA, INC. will not sell or lease vehicles with known safety defects, such as
16 the FEB Defect, and will fully disclose any such defect to consumers prior to
17 purchase, or offer a suitable, non-defective repair.

18 48. NISSAN NORTH AMERICA, INC. had extensive and exclusive notice
19 of the FEB Defect, as detailed above. Additionally, given NISSAN NORTH
20 AMERICA, INC.'s extensive and exclusive knowledge of the FEB Defect, its
21 latency, and NISSAN NORTH AMERICA, INC.'s inability to repair it, any notice
22 requirement would be futile.

23 49. However, NISSAN NORTH AMERICA, INC. wrongfully and
24 intentionally concealed, and continues to conceal, from the lease and/or pre-purchase
25 transaction to the present day, one or more defects in the Subject Vehicle's FEB
26 system that can cause it to falsely engage or otherwise not work as intended ("FEB
27 Defect"). The FEB Defect causes, among other things: (1) the Subject Vehicle to
28 detect non-existent obstacles, thereby automatically triggering the brakes and causing

1 the Subject Vehicle to abruptly slow down or completely stop with no actual need to
2 do so; and/or (2) the FEB system to deactivate itself, thereby distracting the driver
3 and rendering the FEB system disabled and useless. In either scenario, however, the
4 FEB system is not a safety feature, as NISSAN NORTH AMERICA, INC. claimed,
5 but rather an unpredictable and unreasonable safety hazard.

6 50. The FEB Defect can cause the Subject Vehicle to stop without warning
7 during normal and intended vehicle operation, thereby posing an unreasonable safety
8 hazard to drivers, passengers, other motorists, and pedestrians. Plaintiff has reported
9 significant, unexpected, phantom decelerations and stops due to the false engagement
10 of the Subject Vehicle's FEB system, even though no objects – vehicles, pedestrians,
11 or otherwise – were nearby. Additionally, Plaintiff has complained that the FEB
12 system also frequently deactivates itself, detracting his focus from the road and
13 rendering the FEB safety feature useless.

14 51. NISSAN NORTH AMERICA, INC. marketed, and continues to market,
15 the Subject Vehicle, and the FEB system specifically, as safe and reliable. NISSAN
16 NORTH AMERICA, INC., however, failed to disclose the FEB Defect to Plaintiff,
17 despite its knowledge that the Subject Vehicle was defective and not fit for the
18 intended purpose of providing Plaintiff with a safe and reliable transportation at the
19 time of sale and thereafter. NISSAN NORTH AMERICA, INC. has actively
20 concealed, and continues to conceal from Plaintiff the true nature and extent of the
21 FEB Defect after failing to disclose it at the time of purchase, lease, or repair. Had
22 Plaintiff known about the FEB Defect, he would not have purchased the Subject
23 Vehicle, or would have paid less for the Subject Vehicle. As a result of his reliance
24 on NISSAN NORTH AMERICA, INC.'s concealment/omissions, and its active
25 concealment, Plaintiff has suffered an ascertainable loss of money, property, and/or
26 loss in value of the Subject Vehicle.

27 52. Despite notice of the FEB Defect from, among other things, pre-
28 production testing, consumer complaints, warranty data, and dealership repair orders,

1 NISSAN NORTH AMERICA, INC. has not recalled the Subject Vehicle to repair
2 the FEB Defect, has not offered Plaintiff a suitable repair or replacement free of
3 charge, and has not offered to reimburse Plaintiff for costs incurred relating to
4 diagnosing and repairing the FEB Defect, or for the value paid for the FEB feature
5 in the first place. NISSAN NORTH AMERICA, INC. has refused to repair or replace
6 the Subject Vehicle despite that the Subject Vehicle is under a comprehensive
7 warranty, as explained in detail below. Thus, NISSAN NORTH AMERICA, INC.
8 has wrongfully and intentionally transferred the cost of repair of the FEB Defect to
9 Plaintiff by fraudulently concealing the existence of the FEB Defect.

10 53. Under the warranties provided to Plaintiff, NISSAN NORTH
11 AMERICA, INC. promised to repair or replace defective FEB components arising
12 out of defects in materials and/or workmanship, such as the FEB Defect, at no cost
13 to owners or lessors of the Subject Vehicle. For illustrative purposes, NISSAN
14 NORTH AMERICA, INC. offers a 36-month or 36,000-mile Basic Warranty that
15 “covers any repairs needed to correct d effects in materials or workmanship of all
16 parts and components of each new Nissan vehicle supplied by Nissan.”

17 54. NISSAN NORTH AMERICA, INC. breached its express and implied
18 warranties through which it promised, *inter alia*: (1) to provide a Subject Vehicle fit
19 for the ordinary purpose for which it was sold; and (2) to repair and correct
20 manufacturing defects or defects in materials or workmanship of any parts that it
21 supplied, including in the FEB System. Because the FEB Defects was present at the
22 time of sale or lease of the Subject Vehicle, NISSAN NORTH AMERICA, INC. is
23 required to repair or replace the Subject Vehicle pursuant to the terms of the warranty.
24 Instead, NISSAN NORTH AMERICA, INC. has wrongfully shifted to Plaintiff the
25 cost of repair of the FEB Defect, or replacing the Subject Vehicle. These costs are
26 significant, and unexpected by reasonable consumers.

27 55. NISSAN NORTH AMERICA, INC. and its network of authorized
28 dealers possess exclusive and superior knowledge and information regarding the FEB

1 Defect. Despite this, NISSAN NORTH AMERICA, INC. has failed to notify Plaintiff
2 of the FEB Defect, who could not have reasonably discovered the defect through due
3 diligence. Similarly, NISSAN NORTH AMERICA, INC. has failed to provide
4 Plaintiff with any remedy for the FEB Defect, despite voluminous customer
5 complaints.

6 56. While promoting the standard, quality, and/or grade of the Subject
7 Vehicle, NISSAN NORTH AMERICA, INC. knowingly concealed/omitted, and
8 actively conceals, the existence of the FEB Defect at the time of purchase or lease or
9 otherwise to increase its profits and decrease its costs (by selling additional defective
10 vehicles and transferring to Plaintiff the cost of the repair of the FEB Defect or
11 replacement of the vehicle).

12 57. NISSAN NORTH AMERICA, INC. knowingly omitted, concealed, and
13 suppressed material facts regarding the FEB Defect, and misrepresented the standard,
14 quality, or grade of the Subject Vehicle, all at the time of purchase or lease or
15 otherwise, which directly caused harm to Plaintiff. As a direct result of NISSAN
16 NORTH AMERICA, INC.'s wrongful conduct, Plaintiff has suffered damages,
17 including, *inter alia*: (1) out-of-pocket expenses for repair of the FEB Defect; (2)
18 costs for future repairs or replacements; (3) the sale of the vehicle at a loss; (4) the
19 diminished value of the vehicle; and/or (5) the price premium attributable to the FEB
20 feature.

21 58. Plaintiff therefore asserts claims against NISSAN NORTH AMERICA,
22 INC. for fraud, breach of express and implied warranties, and Violation of the Song-
23 Beverly Act Section 1793.2. As alleged herein, NISSAN NORTH AMERICA,
24 INC.'s wrongful conduct has harmed Plaintiff. As such, Plaintiff is entitled to
25 damages.

26 59. Plaintiff hereby revokes acceptance of the sales contract.

27 60. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter the
28 "Act") Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a "consumer

1 good” used primarily for family or household purposes, and Plaintiff has used the
2 vehicle primarily for those purposes.

3 61. Plaintiff is a “buyer” of consumer goods under the Act.

4 62. Defendant, NISSAN NORTH AMERICA, INC., is a “manufacturer”
5 and/or “distributor” under the Act.

6 63. Plaintiff hereby demands trial by jury in this action.

7 **TOLLING OF THE STATUE OF LIMITATIONS**

8 64. To the extent there are any statutes of limitation applicable to Plaintiff’s
9 claims—including, without limitation, the express warranty, implied warranty, and
10 fraudulent omissions claims—the running of the limitations periods has been tolled
11 by the following doctrines of rules: equitable tolling, the discovery rule, the
12 fraudulent concealment rule, equitable estoppel, the repair doctrine, and/or class
13 action tolling (*e.g.*, the *American Pipe* rule) arising from the pendency of the *Bereda*,
14 *et al. v. Nissan North America, Inc.* matter (USDC Middle District of Tennessee,
15 3:22-cv-00098).

16 65. Plaintiff had no way of knowing about Defendant’s deception regarding
17 the Automatic Emergency Braking and Forward Collision Warning Systems defect
18 until the manifestation of the defect manifested and Defendant was unable to repair
19 it after a reasonable number of repair opportunities.

20 66. Plaintiff could not have discovered, through exercising reasonable
21 diligence, that Defendant was concealing the Automatic Emergency Braking and
22 Forward Collision Warning Systems defect and Defendant’s conduct alleged herein
23 within the time period of any applicable statutes of limitation.

24 67. Plaintiff did not discover the facts that would have caused a reasonable
25 person to suspect that Defendant had concealed information about the Automatic
26 Emergency Braking and Forward Collision Warning Systems Defect in Nissan
27 vehicles until shortly before this action was filed.

28 68. Defendant owed a continuous duty to disclose to Plaintiff the accurate

1 character, quality, and nature of Nissan vehicles suffering from the Emergency Brake
2 Defect, and the inescapable repairs, costs, and damages resulting from the
3 Emergency Brake Defect.

4 69. The status of limitations is tolled by various unsuccessful attempts to
5 repair the Subject Vehicle.

6 **JURISDICTION AND VENUE**

7 70. This Court has jurisdiction over the subject matter and parties pursuant
8 to 28 U.S.C. § 1332 *et seq.*, because the amount of recovery sought by Plaintiff
9 exceeds the jurisdictional amount of \$75,000.00, and there is complete diversity
10 among the parties.

11 71. The Subject Vehicle, as reflected in the sales contract, has an
12 approximate value of \$ 30,287.88. Pursuant to the Song-Beverly Act, Plaintiff is
13 seeking general, special, and actual damages, as well as civil penalties, up to two
14 times the amount of actual damage. As such, Plaintiff seeks in the approximate
15 amount of \$ 90,863.64. Plaintiff is also seeking reasonable attorneys' fees under the
16 Act. Accordingly, Plaintiff's claims meet the jurisdictional threshold required under
17 28 U.S.C. § 1332 (a).

18 72. Complete diversity exists as Plaintiff, BEVERLY LUZ COLEMAN, is
19 a citizen of the state of California.

20 73. Defendant, NISSAN NORTH AMERICA, INC., is a Delaware
21 corporation operating and doing business in the state of California. As reflected
22 within Defendant's Statement of Information filed with the California Secretary of
23 State, NISSAN NORTH AMERICA, INC. is incorporated and has its principal place
24 of business in the State of Delaware. A true and correct copy of Defendant, NISSAN
25 NORTH AMERICA, INC.'s Statement of Information filed with the California
26 Secretary of State on November 1, 2021, is attached herewith as **Exhibit A**.

27 74. As such, the Defendant is not incorporated in California but in
28 Delaware. Accordingly, there is complete diversity among the parties under 28

1 U.S.C. § 1332 (a) (1), and Plaintiff has now alleged sufficient facts to establish
2 subject matter jurisdiction.⁷

3 75. Venue is proper in, and Defendants are subject to the personal
4 jurisdiction of this Court because the Subject Vehicle was purchased at Nissan of
5 Alhambra, a NISSAN NORTH AMERICA, INC. authorized dealership and repair
6 facility, located at 1811 W. Main Street, Alhambra, CA 91801.

7 76. Venue is also proper, as Plaintiff, BEVERLY LUZ COLEMAN, is an
8 individual residing in the city of Los Angeles, in the state of California.

9 77. All acts of corporate employees as alleged were authorized or ratified
10 by an officer, director, or managing agent of the corporate employer.

11 78. Each Defendant, whether actually or fictitiously named herein, was the
12 principal, agent (actual or ostensible), or employee of each other Defendant, and in
13 acting as such principal or within the course and scope of such employment or
14 agency, took some part in the acts and omissions hereinafter set forth by reason of
15 which each Defendant is liable to Plaintiff for the relief prayed for herein.

16 **DEMAND FOR JURY TRIAL**

17 79. Plaintiff, BEVERLY LUZ COLEMAN, hereby demands trial by jury in
18 this action.

19 **FIRST CAUSE OF ACTION**

20 **Violation of the Song-Beverly Act – Breach of Express Warranty**

21 80. Plaintiff incorporates herein by reference each and every allegation
22 contained in the preceding and succeeding paragraphs as though herein fully restated
23 and re-alleged.

24 ⁷ The Federal Rules are designed to minimize disputes over pleading technicalities. *See Ashcroft v.*
25 *Iqbal*, 556 US 662, 678 (2009). A complaint is sufficient if it gives the defendant “fair notice of
26 what the ... claim is and the grounds upon which it rests.” *Bell Atlantic Corporation et al. v.*
27 *Twombly*, 550 U.S. 544, at 555 (2007); *see Starr v. Baca*, 652 F3d 1202, 1212 (9th Cir. 2011)
(discussing traditional liberal theory of Rule 8(a)). In determining the sufficiency of a pleading,
28 allegations of material fact are taken as true and construed in the light most favorable to the pleader.
See Erickson v. Pardus, 551 US 89, 94 (2007) (emphasis added); *see also Silvas v. E*Trade Mortg.*
Corp., 514 F.3d 1001 (9th Cir. 2008); *accord Proft v. Raoul*, 944 F3d 686, 690 (7th Cir. 2019).

1 81. These causes of action arise out of warranty and repair obligations of
2 NISSAN NORTH AMERICA, INC. in connection with a vehicle that Plaintiff
3 purchased and for which NISSAN NORTH AMERICA, INC. issued a written
4 warranty. The warranty was not issued by the selling dealership.

5 82. The Subject Vehicle was delivered to Plaintiff with serious defects and
6 nonconformities to warranty and developed other serious defects and
7 nonconformities to warranty including, but not limited to, electrical, structural,
8 engine, transmission, and emission system defects.

9 83. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the
10 “Act”) Civil Code sections 1790 *et seq.*, the Subject Vehicle constitutes a “consumer
11 good” used primarily for family or household purposes, and Plaintiff has used the
12 vehicle primarily for those purposes.

13 84. Plaintiff is a “buyer” of consumers goods under the Act.

14 85. Defendant NISSAN NORTH AMERICA, INC. is a “manufacturer”
15 and/or “distributor” under the Act.

16 86. The foregoing defects and nonconformities to warranty manifested
17 themselves in the Subject Vehicle within the applicable express warranty period. The
18 nonconformities substantially impair the vehicle’s use, value, and/or safety.

19 87. Plaintiff delivered the Subject Vehicle to an authorized NISSAN
20 NORTH AMERICA, INC. repair facility for repair of the nonconformities.

21 88. Defendant was unable to conform the Subject Vehicle to the applicable
22 express warranty after a reasonable number of repair attempts.

23 89. Notwithstanding Plaintiff’s entitlement, Defendant NISSAN NORTH
24 AMERICA, INC. has failed to either promptly replace the new motor vehicle or to
25 promptly make restitution in accordance with the Song-Beverly Act.

26 90. By failure of Defendant to remedy the defects as alleged above, or to
27 issue a refund or replacement vehicle, Defendant is in breach of its obligations under
28 the Song-Beverly Act.

1 91. Under the Act, Plaintiff is entitled to reimbursement of the price paid
2 for the Subject Vehicle, less that amount directly attributable to use by the Plaintiff
3 prior to the first presentation of the nonconformities.

4 92. Plaintiff is entitled to all incidental, consequential, and general damages
5 resulting from Defendant's failure to comply with its obligations under the Song-
6 Beverly Act.

7 93. Plaintiff is entitled under the Song-Beverly Act to recover as part of the
8 judgment a sum equal to the aggregate amount of costs and expenses, including
9 attorney's fees, reasonably incurred in connection with the commencement and
10 prosecution of this action.

11 94. Because Defendant willfully violated the Song-Beverly Act, Plaintiff is
12 entitled in addition to the amounts recovered, a civil penalty of up to two times the
13 amount of actual damages for NISSAN NORTH AMERICA, INC.'s willful failure
14 to comply with its responsibilities under the Act.

15 **SECOND CAUSE OF ACTION**

16 **Violation of the Song-Beverly Act – Breach of Implied Warranty**

17 95. Plaintiff incorporates herein by reference each and every allegation
18 contained in the preceding and succeeding paragraphs as though herein fully restated
19 and re-alleged.

20 96. NISSAN NORTH AMERICA, INC. and its authorized dealership at
21 which Plaintiff purchased the Subject Vehicle had reason to know the purpose of the
22 Subject Vehicle at the time of sale of the Subject Vehicle. The sale of the Subject
23 Vehicle was accompanied by implied warranties provided for under the law.

24 97. Among other warranties, the sale of the Subject Vehicle was
25 accompanied by an implied warranty that the Subject Vehicle was merchantable
26 pursuant to Civil Code section 1792.

27 98. The Subject Vehicle was not fit for the ordinary purpose for which such
28 goods are used because it was equipped with one or more defective vehicle

1 systems/components.

2 99. The Subject Vehicle did not measure up to the promises or facts stated
3 on the container or label because it was equipped with one or more defective vehicle
4 systems/components.

5 100. The Subject Vehicle was not of the same quality as those generally
6 accepted in the trade because it was sold with one or more defective vehicle
7 systems/components which manifested as electrical, structural, engine, transmission,
8 and emission system defects.

9 101. Upon information and belief, the defective vehicle systems and
10 components were present at the time of sale of the Subject Vehicle; thus, extending
11 the duration of any implied warranty under *Mexia v. Rinker Boat Co., Inc.*, 174 Cal.
12 App. 4th 1297, 1304–1305 (2009), and other applicable laws.

13 102. Plaintiff is entitled to justifiably revoke acceptance of the Subject
14 Vehicle under Civil Code, section 1794, *et seq.*

15 103. Plaintiff hereby revokes acceptance of the Subject Vehicle.

16 104. Plaintiff is entitled to replacement or reimbursement pursuant to Civil
17 Code, section 1794, *et seq.*

18 105. Plaintiff is entitled to rescission of the contract pursuant to Civil Code,
19 section 1794, *et seq.* and Commercial Code, section 2711.

20 106. Plaintiff is entitled to recover any incidental, consequential, and/or
21 “cover” damages under Commercial Code, sections 2711, 2712, and Civil Code,
22 section 1794, *et seq.*

23 **THIRD CAUSE OF ACTION**

24 **Violation of the Song-Beverly Act Section 1793.2(b)**

25 107. Plaintiff incorporates herein by reference each and every allegation
26 contained in the preceding and succeeding paragraphs as though herein fully restated
27 and re-alleged.

28 108. Pursuant to Civil Code, section 1793.2, subdivision (a), a manufacturer

1 that sells consumer goods in California, for which it has made an express warranty,
2 shall maintain service and repair facilities or designate and authorize independent
3 service and repair facilities to carry out the terms of those warranties.

4 109. Pursuant to Civil Code, section 1793.2, subdivision (b), when service
5 and repair of goods are necessary because they do not conform with the applicable
6 express warranties, service and repair shall be commenced within a reasonable time
7 by the manufacturer or its representative.

8 110. Civil Code, section 1793.2, subdivision (b), further provides that goods
9 shall be serviced or repaired so as to conform to the applicable warranties within 30
10 days and/or within a reasonable time.

11 111. The sale of the Subject Vehicle was accompanied by express warranties,
12 including a warranty guaranteeing that the Subject Vehicle was safe to drive and not
13 equipped with defective parts, including that of the suspension, electrical,
14 transmission, steering, and engine systems.

15 112. Plaintiff delivered the Subject Vehicle to NISSAN NORTH AMERICA,
16 INC.'s authorized service representatives on multiple occasions for repairs of defects,
17 which amount to nonconformities to the express warranties that accompanied the sale
18 of the Subject Vehicle.

19 113. Defendant's authorized facilities did not conform the Subject Vehicle to
20 warranty within 30-days and/or commence repairs within a reasonable time, and
21 NISSAN NORTH AMERICA, INC. has failed to tender the Subject Vehicle back to
22 Plaintiff in conformance with its warranties within the timeframes set forth in Civil
23 Code section 1793.2(b).

24 114. Plaintiff is entitled to justifiably revoke acceptance of the Subject
25 Vehicle under Civil Code, section 1794, *et seq.*

26 115. Plaintiff hereby revokes acceptance of the Subject Vehicle.

27 116. Plaintiff is entitled to replacement or reimbursement pursuant to Civil
28 Code, section 1794, *et seq.*

1 117. Plaintiff is entitled to rescission of the contract pursuant to Civil Code
2 section 1794, *et seq.* and Commercial Code, section 2711.

3 118. Plaintiff is entitled to recover any “cover” damages under Commercial
4 Code sections 2711, 2712, and Civil Code, section 1794, *et seq.*

5 119. Plaintiff is entitled to recover all incidental and consequential damages
6 pursuant to 1794 *et seq* and Commercial Code sections, 2711, 2712, and 2713 *et seq.*

7 120. Plaintiff is entitled in addition to the amounts recovered, a civil penalty
8 of up to two times the amount of actual damages given that NISSAN NORTH
9 AMERICA, INC. willfully failed to comply with its responsibilities under the Act.

10 **FOURTH CAUSE OF ACTION**

11 **Fraud - Fraudulent Inducement – Concealment**

12 121. Plaintiff incorporates herein by reference each and every allegation
13 contained in the preceding and succeeding paragraphs as though herein fully restated
14 and re-alleged.

15 122. NISSAN NORTH AMERICA, INC. intentionally and knowingly
16 falsely concealed, suppressed, and/or omitted material facts including the standard,
17 quality or grade of the Subject Vehicle and the fact that the FEB system in the Subject
18 Vehicle is defective, exposing drivers, occupants, and members of the public to safety
19 risks with the intent that Plaintiff rely on NISSAN NORTH AMERICA, INC.’s
20 omissions. As a direct result of Defendants’ fraudulent conduct, Plaintiff has suffered
21 actual damages.

22 123. In its quest to be commercially competitive, NISSAN NORTH
23 AMERICA, INC. designed, tested, validated, marketed, and sold its Forward
24 Emergency Braking system (“FEB”) that is featured in the Subject Vehicle.
25 According to NISSAN NORTH AMERICA, INC. itself:

26 [T]his intelligent feature uses radar technology to monitor a
27 vehicle’s proximity to the vehicle ahead, giving the driver
28 audible and visual display warnings to help the driver reduce
the vehicle’s speed if a potential frontal collision is detected. If

1 the driver fails to respond, the [Forward Emergency Braking]
2 system can apply the brakes, helping the driver to avoid the
collision or reduce the speed of impact if it is unavoidable.⁸

3 124. As a result of NISSAN NORTH AMERICA, INC.'s failure to disclose
4 to Plaintiff the material fact that the FEB system in the Subject Vehicle is defective,
5 Plaintiff is required to spend thousands of dollars to repair or replace the FEB Defect
6 or sell the vehicle at a substantial loss. The fact that the FEB system in the Subject
7 Vehicle is defective is material because no reasonable consumer expects that he or
8 them will have to spend thousands of dollars for diagnosis, repair, or replacement of
9 the FEB Defect, and because Plaintiff has a reasonable expectation that the vehicles
10 would not suffer from the FEB Defect.

11 125. The fact that the FEB system installed in the Subject Vehicle is defective
12 is also material because it presents a safety risk and places the driver and occupants
13 at risk of serious injury or death. Because of the FEB Defect, the Subject Vehicle
14 may suddenly brake automatically while driving in traffic. Drivers and occupants of
15 the Subject Vehicle are at risk for rear-end collisions and other accidents caused by
16 the FEB Defect, and the general public is also at risk for being involved in an accident
17 with a Subject Vehicle. Plaintiff would not have purchased the Subject Vehicle but
18 for NISSAN NORTH AMERICA, INC.'s omissions and concealment of material
19 facts regarding the nature and quality of the Subject Vehicle and existence of the FEB
20 Defect, or would have paid less for the Subject Vehicle.

21 126. NISSAN NORTH AMERICA, INC. knew that its concealment and
22 suppression of material facts was false and misleading and knew the effect of
23 concealing those material facts. NISSAN NORTH AMERICA, INC. knew that its
24 concealment and suppression of the FEB Defect would sell more vehicles.

25 127. Despite notice of the FEB Defect from, among other things, pre-
26

27 ⁸ The Confidence of Nissan Safety Technology, Nissan Safety Features & Technologies (Dec. 16,
28 2019), <https://www.nissanusa.com/experience-nissan/news-and-events/car-safetyfeaturestechnology.html> (last visited May 7, 2020).

1 production testing, numerous consumer complaints, warranty data, and dealership
2 repair orders, NISSAN NORTH AMERICA, INC. has not recalled the Subject
3 Vehicle to repair the Defect, has not offered its customers a suitable repair or
4 replacement free of charge, and has not offered to reimburse Plaintiff for the costs
5 incurred relating to diagnosing and repairing the FEB Defect or for the premium price
6 that paid for the FEB feature.

7 128. At minimum, NISSAN NORTH AMERICA, INC. knew about the FEB
8 Defect by way of customer complaints filed with affiliated dealerships and through
9 the NHTSA, as extensively documented above. As such, NISSAN NORTH
10 AMERICA, INC. acted with malice, oppression, and fraud. Plaintiff reasonably
11 relied upon Defendants' knowing, affirmative and active false representations,
12 concealment, and omissions. As a direct and proximate result of NISSAN NORTH
13 AMERICA, INC. false representations, omissions, and active concealment of
14 material facts regarding the FEB Defect, Plaintiff has suffered actual damages in an
15 amount to be determined at trial.

16 129. NISSAN NORTH AMERICA, INC. and its agents intentionally
17 concealed and failed to disclose facts relating to the Automatic Emergency Braking
18 and Forward Collision Warning Systems Defect.

19 130. Defendant was the only party with knowledge of the Automatic
20 Emergency Braking and Forward Collision Warning Systems Defect because that
21 knowledge came from internal reports such as pre-release testing data, customer
22 complaints made directly to Defendant, and technical service bulletins. None of this
23 information was available to the public, nor did Defendant publicly or privately
24 disclose any of the information to Plaintiff. NISSAN NORTH AMERICA, INC. had
25 exclusive knowledge of the defect as described in detail hereinabove.

26 131. NISSAN NORTH AMERICA, INC. actively concealed information
27 from the public, preventing Plaintiff from discovering any of the concealed facts as
28 described in detail hereinabove.

1 132. Further, NISSAN NORTH AMERICA, INC. has learned more about
2 the Automatic Emergency Braking and Forward Collision Warning Systems Defect
3 and has intentionally concealed and suppressed that information; Nissan has failed to
4 recall the effected vehicles or otherwise inform Plaintiff of the Automatic Emergency
5 Braking and Forward Collision Warning Systems Defect.

6 133. Prior to the date of sale, on the date of sale, and on the date of each of
7 the repair attempts, NISSAN NORTH AMERICA, INC. had an opportunity to
8 disclose the Automatic Emergency Braking and Forward Collision Warning Systems
9 Defect to Plaintiff, but instead concealed from and failed to disclose to Plaintiff, any
10 of the known irreparable issues with the Subject Vehicle.

11 134. NISSAN NORTH AMERICA, INC. intended to deceive Plaintiff by
12 concealing the known issues with the Automatic Emergency Braking and Forward
13 Collision Warning Systems Defect in an effort to sell the Subject Vehicle at a
14 maximum price.

15 135. NISSAN NORTH AMERICA, INC. knew of the specific issues
16 affecting the Subject Vehicle, including the defective Automatic Emergency Braking
17 and Forward Collision Warning Systems Defect, prior to the sale of the Subject
18 Vehicle. Plaintiff's Vehicle was sold after NISSAN NORTH AMERICA, INC.
19 acknowledged these problems in Automatic Emergency Braking and Forward
20 Collision Warning Systems Defect without any disclosure to Plaintiff regarding the
21 same. When Plaintiff experienced repeated problems with the Automatic Emergency
22 Braking and Forward Collision Warning Systems Defect in the Subject Vehicle and
23 delivered it to NISSAN NORTH AMERICA, INC.'s authorized repair facility for
24 evaluation and repair, NISSAN NORTH AMERICA, INC. and its agents continued
25 to conceal the known Automatic Emergency Braking and Forward Collision Warning
26 Systems Defect and repeatedly represented to Plaintiff that they were able to, and did
27 fix the issue.

28 136. Plaintiff did not know about the Automatic Emergency Braking and

1 Forward Collision Warning Systems Defect at the time of the vehicle's sale. Plaintiff
2 also did not know of the irreparable nature of the problems at the time of any of the
3 repair attempts because NISSAN NORTH AMERICA, INC. and its agents
4 repeatedly represented that they were able to fix the Subject Vehicle upon return of
5 the vehicle to Plaintiff.

6 137. Had NISSAN NORTH AMERICA, INC. and/or its agents publicly or
7 privately disclosed the Automatic Emergency Braking and Forward Collision
8 Warning Systems Defect to Plaintiff at or prior to the sale, Plaintiff would not have
9 purchased the Subject Vehicle.

10 138. Plaintiff was harmed by Defendant's concealment of the Automatic
11 Emergency Braking and Forward Collision Warning Systems Defect because
12 Plaintiff was induced to enter into the sale of a vehicle that he would not have
13 otherwise purchased.

14 139. Plaintiff is a reasonable consumer who interacted with NISSAN
15 NORTH AMERICA, INC.'s sales representatives and/or reviewed materials
16 distributed by Defendant concerning Nissan vehicles prior to Plaintiff's purchase of
17 the Subject Vehicle. Plaintiff would have been aware of the Automatic Emergency
18 Braking and Forward Collision Warning Systems Defect and would not have leased
19 and/or purchased the Subject Vehicle if Defendant had disclosed the Emergency
20 Brake Defect and its associated safety hazards to its sales representatives and/or the
21 consumer public.

22 140. Defendant's concealment of these defects was a substantial factor in
23 causing Plaintiff's harm.

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PRAYER FOR RELIEF

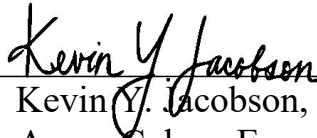
WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. For general, special, and actual damages according to proof at trial;
2. For rescission of the purchase contract and restitution of all monies expended;
3. For diminution in value;
4. For incidental and consequential damages according to proof at trial;
5. For civil penalty in the amount of two times Plaintiff's actual damages;
6. For punitive damages;
7. For prejudgment interest at the legal rate;
8. For reasonable attorney's fees and costs of suit; and

For such other and further relief as the Court deems just and proper under the circumstances.

Dated: August 30, 2022

QUILL & ARROW, LLP



Kevin Y. Jacobson, Esq.

Aaron Cohen, Esq.

Attorneys for Plaintiff,

BEVERLY LUZ COLEMAN

Plaintiff, BEVERLY LUZ COLEMAN, hereby demands trial by jury in this action.